

05 - 11510 PBS
UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

TRUSTEES OF THE PLUMBERS AND GASFITTERS'
LOCAL UNION NO. 12 WELFARE, PENSION, ANNUITY,
VACATION & XMAS AND FRINGE BENEFIT FUNDS;
PLUMBERS AND GASFITTERS LOCAL 12; AND
PLUMBERS' UNION NO. 12 LABOR MANAGEMENT
COOPERATION TRUST FUND,

Plaintiffs

VS.

McGLONE PLUMBING, INC.

Defendant

CLERK OF COURT
JUL 15 2005
U.S. DISTRICT COURT
DISTRICT OF MASSACHUSETTS
JUDGE *Dein*

Civil Action No.

RECEIPT #
AMOUNT \$ *250*
SUMMONS ISSUED *yes*
LOCAL RULE 4.1
WAIVER FORM
MCF ISSUED *July 15, 2005*
BY DPTY. CLK. *Tom*
DATE *7/18/05*

COLLECTION COMPLAINT

1. This is an action under the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 USC §1001, et seq., as amended by the Multi-Employer Pension Plan Amendments Act, 29 U.S.C. §1381 et seq., and the Labor Management Relations Act of 1947, 29 U.S.C. § 185 brought on behalf of the Trustees of the Plumbers and Gasfitters' Local Union No. 12 Welfare, Pension, Annuity, Vacation & Xmas and Fringe Benefit Funds; Plumbers and Gasfitters Local 12; and Plumbers' Union No. 12 Labor Management Cooperation Trust Fund ("the Plaintiffs") for damages arising from unpaid Funds contributions and late fees.

2. This court has jurisdiction, and venue lies in this District pursuant to 29 U.S.C. § 1132(e)(1) and (2) and 29 U.S.C. § 185(c).

THE PARTIES

3. Plaintiffs Trustees of the Plumbers and Gasfitters' Local Union No. 12 Welfare, Pension, and Annuity Funds ("ERISA Funds") are "fiduciaries" within the meaning of Section 502(a)(3) of ERISA, 29 U.S.C. §1002(37)(A) and each is an "employee benefit plan" or "plan" within the meaning of Section 3(3) of ERISA, 29 U.S.C., §1002(3). The ERISA Funds are jointly-administered, multi-employer, labor-management trust funds that provide health insurance and retirement benefits to Plumber Journeymen and Apprentices who work in employment covered by the Collective Bargaining Agreement between the Union and the signatory Employers. The Funds have their principal office at and are administered from 1230-1236 Massachusetts Avenue, Boston, Massachusetts 02125.

4. Plaintiff Plumbers and Gasfitters Local 12 (the "Union") is a "labor organization" within the meaning of 29 U.S.C. §152(5) and is located at 1240 Massachusetts Avenue, Boston, Massachusetts 02125.

5. Plaintiff Vacation & Xmas and other Fringe Benefit Funds are non-profit benefit funds established to provide benefits to Journeyman and Apprentice Plumbers and their Union funded through hourly deductions from wages as described in the Union's Collective Bargaining Agreement.

6. Plaintiff Plumbers' Union No. 12 Labor Management Cooperation Trust Fund (the "LMCT") is a jointly-administered multi-employer Labor Management Committee within the meaning of the Labor Management Cooperation Act of 1978, Section 6, Public Law 95-524 - Oct. 27, 1978, § 392 (c) (9) of the Labor Management Relations ("Taft-Hartley") Act, 29 U.S.C. § 186 (c)(9). The LMCT is a non-profit labor trust within the meaning of the Internal Revenue Code, 26 U.S.C. § 501(c)(5) and is located at 1240 Massachusetts Avenue, Boston, Massachusetts 02125.

7. Defendant McGlone Plumbing, Inc. is an "employer" within the meaning of 29 U.S.C. § 1002(5) with a principal place of business located at 111 French Avenue, Braintree, Massachusetts 02184 and is an employer in an industry affecting commerce within the meaning of 29 U.S.C. § 142(1) and § 152 (2), (6) and (7).

8. Defendant McGlone Plumbing, Inc. is a member of the Greater Boston Association of Plumbing, Heating, Cooling Contractors, Inc. ("GBAPHCC") a multi-employer association that negotiates on behalf of member contractors and those contractors who have assigned their bargaining rights to GBAPHCC and, as such, is a signatory contractor to the Collective Bargaining Agreement between the Union and GBAPHCC.

COUNT I
ERISA - COLLECTION OF DELINQUENT FUNDS CONTRIBUTIONS
AND LATE FEES

9. At all material times, Defendant is obligated by the terms of the Collective Bargaining Agreement to which it is bound and by the terms of the Funds' Agreement

and Declaration of Trust to which Defendant is bound to make contributions, as determined in the Collective Bargaining Agreement, to the Plaintiff Funds for each hour worked by its plumbing Journeyman and Apprentice employees.

10. Defendant's last payment to the Funds was for contributions owed for the month of March 2005. Since that time, Defendant has failed to make required contributions to the Plaintiff Funds in violation of Section 515 of ERISA, 29 U.S.C. § 1145. Defendant is presently delinquent in contributions owed to the Funds for the months of **April 2005** and **May 2005**. In addition, the contributions for June 2005 are now due.

11. Monthly reports submitted to the Funds by the Defendant, as required by the Funds' Agreement and Declaration of Trust and the Funds' Collection Procedures and the terms of the Collective Bargaining Agreement, demonstrate that Defendant owes contributions to the Funds for work performed by its employees and Union members for the months of April 2005 in the amount of **\$9,091.21**. Of this sum, **81.23%** are funds owed to the ERISA Funds and the remaining to the non-ERISA Funds.

12. Defendant has failed to submit its monthly contributions report for the month of May 2005. However, based upon the average monthly contributions paid to the Funds by Defendant, it is estimated that the May 2005 contributions are in the amount of **\$9,000.00**. A definite sum will be provided when the Defendant provides its monthly report for the month of May 2005. Of this monthly contribution, **81.23%** are funds owed to the ERISA Funds.

13. Defendant continues to employ Local 12 Plumbers/Apprentices and, at the present rate of work, will owe an estimated additional \$9,000.00 for the month of June 2005. The June contributions are due July 15, 2005 and have not yet been paid.

14. Each month in which a delinquency arose, Plaintiff Funds forwarded demand correspondence to Defendant requesting payment of the delinquent contributions and reminding that failure to submit contributions will result in litigation in which Defendant would be required to pay the delinquent contributions, plus interest, costs and attorney's fees. Defendant failed to respond to Plaintiff Funds' correspondence or to submit the delinquent contributions. On July 5, 2005, a *Final Notice* demand letter was forwarded to Defendant.

15. Each month, Plaintiff Funds forwarded demand correspondence to the Defendant requesting payment for the contributions owed to the Funds and have repeatedly explained that failure to forward payments would result in late fee charges pursuant to the Plaintiff Trustees' Collection Policy and the Collective Bargaining Agreement. As of July 1, 2005, Defendant owes the Funds **\$222.50.⁰⁰** in late fees on the above-mentioned delinquent contributions for delinquent contribution payments for the months of February 2005 through April 2005. An updated late fee sum will be provided.

COUNT II:
LABOR MANAGEMENT RELATIONS ACT –
COLLECTION OF DELINQUENT FUNDS CONTRIBUTIONS AND DEDUCTIONS
AND LATE FEES

16. Plaintiffs hereby incorporate by reference the above Paragraphs 1-15.

17. This court has jurisdiction over this claim pursuant to 29 U.S.C. § 185 and 28 U.S.C. § 1331.

18. Plumbers and Gasfitters Local 12 and Defendant are parties to a Collective Bargaining Agreement that is a contract within the meaning of 29 U.S.C. § 185(a).

19. Defendant is obligated by the terms of the Collective Bargaining Agreement to pay to the Funds monthly contributions at hourly rates determined in the Collective Bargaining Agreement and to make deductions from net wages as determined by the Collective Bargaining Agreement for purposes of funding the ERISA and other Fringe Benefit Funds.

20. Defendant has failed to remit the required contributions and deductions each month as required by the parties' Collective Bargaining Agreement.

21. By the above action, Defendant has breached the parties' Collective Bargaining Agreement and must pay to the Funds all of the delinquent contributions and deductions to the Funds along with interest, costs, and attorney fees as provided in the parties' Collective Bargaining Agreement.

COUNT III:
LABOR MANAGEMENT RELATIONS ACT –
FAILURE TO PROVIDE A FRINGE BENEFIT BOND

22. Plaintiffs hereby incorporate by reference the above Paragraphs 1-21.

23. This court has jurisdiction over this claim pursuant to 29 U.S.C. § 185 and 28 U.S.C. § 1331.

24. Plumbers and Gasfitters Local 12 and Defendant are parties to a Collective Bargaining Agreement that is a contract within the meaning of 29 U.S.C. § 185(a).

25. Defendant is obligated by the terms of the Collective Bargaining Agreement to obtain and provide a Fringe Benefit Bond to secure payment of Funds contributions.

26. Defendant has failed to provide the Fringe Benefit Bond as required by the parties' Collective Bargaining Agreement.

27. By the above action, Defendant has breached the parties' Collective Bargaining Agreement and must be ordered to provide a Fringe Benefit Bond as required by the parties Collective Bargaining Agreement.

WHEREFORE, Plaintiffs demand that judgment enter in accordance with Section 502 of ERISA, 29 U.S.C. § 1132(g)(2), and 29 USC § 185:

1. Awarding the Plaintiffs the following:

(a) the unpaid delinquent contributions for the period of April through June 2005 in the estimated amount of: **\$27,091.21**
(definite figure will be provided when discovery is concluded or the monthly contribution reports received from Defendant)

(b) delinquent late fees in the amount of: **\$222.50**
(or the greater amount that will be provided when discovery is concluded or the monthly contribution reports received from Defendant)

Total of (a) through (b): \$27,313.71

- (c) subsequent delinquencies that may become due and owing during the pendency of this suit;
- (d) interest on delinquent payments from the date of this lawsuit through the date of final payment;
- (e) liquidated damages in an amount equal to the greater of interest on unpaid contributions or twenty percent (20%) of the unpaid contributions;
- (f) all costs and reasonable attorney's fees incurred by the Plaintiffs in connection with this action; and

2. Issuing an Order permanently enjoining the Defendant from violating its obligation under the terms of its Collective Bargaining Agreement with the

Plumbers and Gasfitters Local 12 and the Agreement and Declaration of Trust to submit timely *contributions* and *reports* to the Plaintiffs; and

3. Issuing an Order requiring Defendant to provide a Fringe Benefit Bond as required by the parties' Collective Bargaining Agreement, and the Plaintiff Trustees' Collection Policy pursuant to the Agreement and Declaration of Trust; and

4. Issuing an Order for such other relief as this Court may deem just and proper.

Dated: July 15, 2005

Respectfully submitted,

Robert M. Cheverie, Esq.
ROBERT M. CHEVERIE &
ASSOCIATES, P.C.
333 East River Drive, Suite 101
East Hartford, CT 06108
(860) 290-9610
BBO# 082320


Attorney for Plaintiffs

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Complaint has been served by certified mail, as required by Section 502(h) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. Section 1132(h), this 15th day of July 2005, on the following:

Secretary of the Treasury
INTERNAL REVENUE SERVICE
P. O. Box 13163
Baltimore, MD 21203
Attn: **Employee Plans**

Secretary of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210
Attn: **Assistant Solicitor for Plan Benefits Security**


Robert M. Cheverie

JTF.12TF.McGLONE PLUMBING.2005
Complaint 7-15-05

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I (a) PLAINTIFFS

TRUSTEES OF THE PLUMBERS AND GASFITTERS' LOCAL UNION NO. 12 WELFARE, PENSION, ANNUITY, VACATION & XMAS and FRINGE BENEFIT FUNDS; PLUMBERS AND GASFITTERS LOCAL 12; and PLUMBERS' UNION NO. 12 LABOR MANAGEMENT COOPERATION TRUST FUND

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Suffolk
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Robert M. Cheverie, Esq.
ROBERT M. CHEVERIE & ASSOCIATES, P.C.
333 East River Drive, Suite 101
East Hartford, CT 06108 (860) 290-9610

DEFENDANTS

McGLONE PLUMBING, INC.

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT Norfolk
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

ATTORNEYS (IF KNOWN)

II. BASIS OF JURISDICTION

(PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

Breach of Collective Bargaining Agreement and to collect contributions due to Plaintiffs' Funds under ERISA, and 29 U.S.C. Sections 185 and 29 U.S.C., Section 1002 et. seq.

V. NATURE OF SUIT

(PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input checked="" type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input checked="" type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 hia (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405)(g) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405)(g))	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/CC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Other (including 1983 Actions)		

VI. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION
☐ UNDER F.R.C.P. 23

DEMAND \$40,000.⁰⁰

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ YES ☐ NO

VIII. RELATED CASE(S) IF ANY:

(See Instructions):

JUDGE

DOCKET NUMBER

DATE
July 15, 2005

SIGNATURE OF ATTORNEY OF RECORD

Robert M. Cheverie, Esq.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) Trustees of the Plumbers and Gasfitters' Local Union No. 12, Welfare, Pension, Annuity, Vacation & Xmas and Fringe Benefit Funds v. McGlone Plumbing, Inc.
2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).
- ☐ I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.
- ☒ II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950. *Also complete AO 120 or 121 for patent, trademark, copyright cases
- ☐ III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- ☐ IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- ☐ V. 150, 152, 153.
3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.
- None
4. Has a prior action between the same parties and based on the same claim ever been filed in this court?
- YES ☐ NO ☒
5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)
- YES ☐ NO ☒
- If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?
- YES ☐ NO ☐
6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?
- YES ☐ NO ☐
7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).
- YES ☐ NO ☒
- A. If yes, in which division do all of the non-governmental parties reside?
- Eastern Division ☒ Central Division ☐ Western Division ☐
- B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?
- Eastern Division ☒ Central Division ☐ Western Division ☐
8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)
- YES ☐ NO ☐

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Robert M. Cheverie, Esq., ROBERT M. CHEVERIE & ASSOCIATES, P.C.ADDRESS 333 East River Drive, Suite 101, East Hartford, CT 06108TELEPHONE NO. (860) 290-9610